STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION	DOCKET NO. RMU-99-10

ORDER COMMENCING RULE MAKING

(Issued May 19, 2000)

Pursuant to the authority of Iowa Code §§ 479.29, 479A.14, 479B.20, 476.1, 476.2, and 17A.4 (1999), the Utilities Board proposes to adopt the rules attached hereto and incorporated by reference in this order. These rules replace 199 IAC chapter 9. The reasons for proposing these rules are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-99-10, is commenced for the purpose of receiving comments on the proposed rules in the notice attached hereto, and incorporated by reference, in this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 19th day of May, 2000.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 479.29, 479A.14, and 479B.20, the Iowa Utilities Board (Board) gives notice that on May 19, 2000, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Commencing Rule Making."

On September 15, 1999, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Commencing Rule Making" to receive public comment on the adoption of land restoration rules. The Notice of Intended Action was published in the IAB Vol. XXII, No. 7 (10/6/99) p. 573, as ARC 9400A. Written comments were filed on or before October 28, 1999, and a workshop to receive oral comments was held on November 17, 1999. On November 24, 1999, the Board issued an "Order Scheduling Additional Comments." Additional comments were filed on or before December 8, 1999.

Pursuant to the authority of Iowa Code section 17A.4(1)"b," on May 15, 2000, the Board issued an order In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Terminating Rule Making." herein ARC _____. At the November 17, 1999, oral presentation, in the rule making noticed as ARC 9400A (herein the pre-termination proceeding will be identified as ARC 9400A), the Board stated its intent to receive additional written and oral comment on a new set of proposed land restoration rules. (Tr. 197). After considering fully all written and oral

submissions and the 180-day rule making parameters, the Board terminated ARC 9400A and will issue new proposed land restoration rules in this Notice of Intended Action. The new proposed rules incorporate written and oral comments in ARC 9400A. This notice will discuss the proceedings that resulted in the new proposed rules. The rule making docket, identified as Docket No. RMU-99-10, will remain the same to facilitate continuity between the previous and current rule making proceeding.

The Board is proposing to rescind current 199 IAC chapter 9 and replace it with a new chapter 9. Currently, chapter 9 sets the standards for underground improvements, soil conservation structures, and restoration of agricultural lands after pipeline construction. The rules apply to pipelines transporting any solid, liquid, or gaseous substance except water, including intrastate and interstate natural gas pipelines and hazardous liquid pipelines.

New chapter 9 is intended to implement the changes adopted in 1999 Iowa Acts, Senate File 160, including prescribing standards for the restoration of land for agricultural purposes during and after pipeline construction. The legislation amended Iowa Code sections 479.29, 479.45, 479.48, 479A.14, 479A.24, 479A.27, 479B.20, 479B.29, and 479B.32.

1999 Iowa Acts, Senate File 160, amended Iowa Code chapters 479, 479A, and 479B to focus the Board's authority to establish standards for the restoration of agricultural lands during and after pipeline construction. The amendments directed the Board to adopt rules which include a list of items in the statutes. The legislation affirms the county boards of supervisors' authority to inspect projects and gives the

county boards of supervisors the authority to file a complaint with the Board in order to seek civil penalties for noncompliance with various requirements. The new chapter requires petitioners for permits or federal certificates for pipeline construction to file a written land restoration plan and provide copies to all landowners. The proposed rules, pursuant to the statute, allow the application of different provisions, which are contained in agreements with landowners and defines compensable losses.

In the new chapter 9, the Board sets out a procedure for review of land restoration plans. Those pipeline companies that are subject to Iowa Code chapters 479 and 479B and, therefore, must file a petition for pipeline permit shall file a land restoration plan at the time they file a petition for permit or application for amendment of permit with the Board. Those interstate pipeline companies that are subject to Iowa Code chapter 479A and have construction projects requiring a certificate from the Federal Energy Commission (FERC) must file a land restoration plan at least 120 days prior to construction. The proposed rules describe the contents of a land restoration plan and then set out detailed requirements for land restoration.

Written comments in ARC 9400A were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Alliant Energy–IES Utilities Inc. and Interstate Power Company (Alliant), MidAmerican Energy Company, (MidAmerican), Northern Natural Gas Company and Northern Border Pipeline (Northern), Alliance Pipeline L.P. (Alliance), BP Amoco Pipelines-North America (Amoco) and the Iowa Petroleum Council (IPC). ANR Pipeline Company (ANR) and

Grundy County Board of Supervisors filed letters announcing their intention to participate in the workshop but not making specific comments. Poweshiek County filed a letter supporting the rules as drafted but did not make specific comments. The Office of Grundy County Engineer (Grundy County) filed late comments on November 15, 1999.

At the November 17, 1999, workshop, in ARC 9400A, panel discussions were held on the definition of pipeline construction, FERC environmental assessments, pre-approval of land restoration plans for hazardous liquid, intrastate and interstate natural gas pipelines, storage of topsoil on traveled ways, temporary tile repair, mandatory county inspections, post construction drainage issues, and the proposed rules. Northern, Alliance, ICP, Consumer Advocate, the Iowa Farm Bureau Federation (Farm Bureau), MidAmerican, Delaware County Supervisor Shirley Helmrichs, and Landowners Todd Voss, Jack and Debbie Hartman, Jim Shover, and Gary Mugge participated in the workshop discussions.

Additional comments in ARC 9400A were filed by Consumer Advocate, Northern, Farm Bureau, Robert and Susan Garner, Allen Cassel, Mr. and Mrs. Donald Langbehn, Richard and Betty Lynch, James L. Shover, Michael J. Ryan, Gordon Mau, Ed Offerman, ANR, Shirley E. Helmirichs, and Henry Bechtel. Kathryn A. Hall filed additional comments on December 10, 1999. On December 22, 1999, Sherwood Jackson filed comments and Amoco filed on December 28, 1999.

Alliance and Northern assert that the statutory language from Iowa Code section 479A.14(12) exempting any pipeline projects that have received a Federal Energy Regulatory Commission (FERC) certificate by June 1, 1999, from the land restoration

requirements should be incorporated in subrule 9.1(1). 2000 Iowa Acts, House File 2247, amended Iowa Code chapter 479A by removing the provision that the land restoration requirements of section 479A.14 did not apply to interstate natural gas pipeline construction projects that had received a certificate from FERC prior to June 1, 1999. House File 2247 is effective July 1, 2000. In order to avoid any future confusion, a sentence will be added to subrule 9.1(1) to clarify that certain construction commenced during 1999 is not subject to the requirements of new chapter 9.

MidAmerican suggested clarification of the definition of landowner in paragraph 9.1(3)"c" and the addition of a definition of "property interest." The definition of "landowner" is set forth in various sections of Iowa Code chapters 479 and 479B. Pursuant to Iowa Code sections 479.5 and 479B.4, a landowner, for informational meeting notices, is "a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property." Persons residing on the property must also be notified but are not classified as landowners. For payment of damages, pursuant to Iowa Code sections 479.46(7), 479A.25(7), and 479B.30(7), the term "landowner" includes a farm tenant.

With the possible exception of contract purchasers, tenants do not usually possess property rights that allow the tenants to dictate how the property is treated. Where the legislature intended the term landowner to have more than its usual meaning, or to give rights to persons who are not the landowner, it has specifically done so. Expanding the term creates ambiguities and difficulty in determining who is entitled. Non-owners can be difficult to identify and locate. *See* Anstey v. Iowa State

Commerce Commission, 292 N.W.2d 380 (Iowa 1980). The Board does not believe a specific statement in the rule is necessary to allow landowners to have another party represent their interests. Paragraph 9.1(3)"c" is modified by deleting the second sentence in the definition.

The interstate pipeline companies objected to paragraph 9.1(3)"f" because of the procedural burdens of filing a land restoration plan for "construction." Northern, IPC, and Amoco suggested exempting minor projects. Northern sought clarification that certain activities it considered maintenance not be considered "construction." Northern suggested exempting normal operation or maintenance activities, construction for emergency or safety purposes, construction required by state or local governmental agencies or authorities, and construction on property owned or leased by the pipeline company. Consumer Advocate and Farm Bureau maintained the exemption for emergency construction could be a potential loophole and that activities construed as maintenance could also damage the land.

The definition of "pipeline construction" is of critical importance, because under Iowa Code sections 479.29(1), 479A.14(1), and 479B.20(1) the land restoration standards apply to pipeline construction. The Board believes a broad definition of construction is necessary to carry out the intent of the legislature to protect and restore Iowa agricultural land. The determination of the breadth of the definition of "pipeline construction" is within the Board's discretion in this rule making. To prevent the creation of a serious loophole in the applicability of the standards in these rules, the definition will include installation, replacement, operation, and maintenance involving a significant disturbance to the land and removal of a pipeline. The Board

recognizes that for public safety reasons, emergency repairs sometimes must be conducted in a manner inconsistent with this chapter. For this reason, the definition of "pipeline construction" in paragraph 9.1(3)"f" will exempt emergency repairs. While that means the land restoration standards technically will not apply to emergency repairs, if the definition is adopted, the Board will emphatically urge the pipeline companies to make every reasonable effort, whenever they disturb the soil, to fully restore agricultural land in compliance with the standards in this chapter.

The definition of "pipeline construction" is also important with regard to interstate natural gas pipelines, because under Iowa Code section 479A.14(9), a land restoration plan must be filed prior to the initiation of construction. Proposed rule 9.2 requires a specific land restoration plan filing for all interstate natural gas pipeline construction projects requiring a certificate from the federal energy regulatory commission. For the generally less significant interstate natural gas construction projects that do not require a federal certificate, these rules provide a sufficient level of specificity in methods, procedures, and restoration results to deem that the rules constitute a land restoration plan. This approach is consistent with Iowa Code sections 479.29(9) and 479B.20(9), which require a land restoration plan for intrastate and hazardous liquid pipeline projects only when the pipeline company files a petition for a permit. Lesser projects not requiring a permit are subject to the standards in these rules, but are not required to be individually addressed in a plan. Interstate natural gas projects will be handled in the same way.

Turning to Northern's other assertions, construction required by state or local governments such as road projects may impact privately-owned agricultural land.

Exemption is not appropriate. Also, since the land restoration standards apply only to agricultural land, no exception is necessary for land that has been leased or purchased by a pipeline company and used for non-agricultural purposes.

Alliant suggested the term "proper notice" to the county inspector be defined. Northern also supported defining the term and recommended language. In the panel discussion, Consumer Advocate, Farm Bureau, Delaware County Supervisor Shirley Helmrichs, and several landowners asserted that it was important for the county inspector to inspect and approve all land restoration. The county inspector should be informed when critical functions occur. New paragraph 9.1(3)"g" will require the county inspector receive at least 24 hours written notice prior to trenching, tile repairing, or backfilling at a specific location.

MidAmerican and Northern commented about the possible implication of a general reference to soil conservation agencies rather than to a specific agency in paragraph 9.1(3)"h." Northern suggested the paragraph reference only the Iowa Natural Resources Conservation Service. MidAmerican and Northern's apparent concern is what type of groups could be classified as soil conservation agencies. The Board recognizes their concern and will clarify paragraph 9.1(3)"h" by adding the phrase "federal or state soil conservation agencies." The reference to "soil conservation agencies" in paragraph 9.1(3)"l" will also be modified by adding the phrase "federal or state soil conservation agencies" for the same reasons.

Northern also recommended deleting "timber" as a soil conservation practice in paragraph 9.1(3)"h" because it may be too broad. The Board agrees with Northern. The term "timber" could encompass natural woods and other wooded areas that are

not intended to be used for land conservation purposes. Paragraph 9.1(3)"h" will be modified by substituting "tree plantings" for the term "timber" and the phrase "but not limited to" will also be added.

Northern recommended clarifying the definition of topsoil set forth in paragraph 9.1(3)"k" by deleting the last sentence and adding the phrase "whether in cultivated or uncultivated soil" to the first sentence. Delaware County Supervisor Shirley Helmrichs maintained the definition of topsoil should be more detailed and cited as an example the change in color between topsoil and subsoil. Landowner Gordon Mau suggested adding a reference to the organic content and color of typical topsoil. The Board finds merit in these suggestions and will revise the definition accordingly.

Rule 9.2 sets forth when a plan is required. In written and oral comments, many commenters proposed filing a generic plan, which could be pre-approved by the Board. The commenters contend that the filing of a generic plan would eliminate the need for individual plan preparation and Board consideration in each proceeding. Consumer Advocate and Farm Bureau suggested the pipeline companies file generic plans for all construction plus maintenance, repair, and emergency work. The plans would be subject to Board review both at filing and periodically thereafter.

One of the advantages of a generic plan would be that the landowners could be informed of the company's plan early in the process. However, with a generic plan, the landowners would not have the opportunity for input into the plan content, nor could the Board address any unique aspects of the project. The Board declines to modify rule 9.2 concerning a generic plan. As previously discussed, specific plans are only required when permits or certificates are required by the state or FERC. Pipeline

companies are not precluded by the rule in submitting a model plan for review and comment in advance of a petition for federal or state construction authorization. Additionally, construction activities not requiring permits or certificates from the Board or FERC remain subject to the land restoration requirements but not individual plans. The rules in chapter 9 effectively provide the "generic plan" for construction not requiring the filing of a specific plan.

Amoco opposed the inclusion of information pertaining to the purpose and nature of the pipeline project as required by subparagraph 9.2(a)"1" as part of the plan. Amoco contended the information could be confidential and that the plan is not the proper forum for information unrelated to land restoration. The information benefits the landowners that receive a copy of the plan. In addition, the information will be available through the Iowa pipeline permitting process, which includes public informational meetings, notice and hearing. Subparagraph 9.2(a)"1" will be proposed without change.

Amoco proposed deleting the phrase "good cause" from subrule 9.2(b). Amoco contended the subrule sets an unnecessary threshold of proof to obtain a waiver to accept plan variations. On January 18, 2000, the Board issued an order in Docket No. RMU-00-1, "In re: Rule Waivers" to implement changes in Governor Vilsack's Executive Order 11, issued September 14, 1999, which requires each agency to adopt uniform waiver rules. The Board will modify subrule 9.2(b) to reference 199-1.3 to reflect the current and future waiver rule, whichever is in effect at a particular time.

Northern and Alliance suggested subrule 9.2(2) be modified to include a FERC "Environmental Assessment" (EA) as an alternative to a land restoration plan.

Consumer Advocate was not opposed to the suggestion if the EA was comparable to the Environmental Impact Statement (EIS). Farm Bureau contended the EA was not as comprehensive as an EIS, usually does not cover all required areas of a land restoration plan, and has less opportunity for public input than an EIS. The Board's role is to review the land restoration plans to insure that Iowa requirements will be met. If an EA contains the information necessary to make this determination, there is no reason why it can not be utilized. The Board has found the EA information sufficient in Docket No. WRU-99-35-233, Northern Natural Gas Company, and will modify the rule to include EAs.

Northern also recommended the Board define EIS and EA by citing the FERC definition. The Board finds merit in Northern's recommendation and will modify the rule to cite the federal regulation containing these definitions.

Northern and Alliance opposed the 120-day pre-filing requirement in subrule 9.3(2). They argue the FERC certificate may be issued less than 120 days before the planned start of construction and the process could be delayed by the filing requirement. The Board must balance the timeliness of federal actions with the time needed for review and distribution of the approved plan. The Board will modify subrule 9.3(2) to accept draft environmental documents or best-available information at the beginning of the review period, and to allow conditional decisions if final information is not available.

Amoco and IPC objected to the requirements set forth in subrule 9.4(1) that topsoil be stripped from the subsoil storage area. They contend there is no evidence that placing subsoil on the topsoil is harmful and allege this is not a common industry

practice. If topsoil is stripped from the subsoil storage area, the subsoil and the topsoil will never come in contact so they cannot be mixed. This separation is common practice for gas pipelines and is required by the FERC Upland Erosion Control, Revegetation, and Maintenance Plan. The subrule will be proposed without change.

Consumer Advocate recommended adding stringent requirements for staking the area to be topsoiled because of instances in which it was difficult to verify that the required amount of the topsoil had been removed. The Board is reluctant to add stringent requirements for staking to subrule 9.4(1) as suggested by Consumer Advocate since none of the landowners, nor the comments of a county inspector provided by the Delaware County Supervisor, indicate a problem in this area.

Landowner Gordon Mau suggested removing all topsoil regardless of depth from both the trench and the entire working right-of-way. The Board believes removing topsoil from the working right-of-way would risk more damage to the topsoil and place underlying tile lines at greater risk than leaving it in place. The working right-of-way can be 50 feet and more in width, and, especially in deep topsoil stripping, 50+ feet adds up to such a large volume of earth that Mr. Mau's proposal is not practical. The exception would be if wet conditions threatened mixing of topsoil and subsoil by construction equipment, and that is addressed in subrule 9.4(10).

Farm Bureau, Landowner Ed Offerman and Landowner Gordon Mau opposed the 12-inch limit on topsoil removal, contending that all topsoil should be removed from the trench whatever its depth. Neither the FERC Upland Erosion Control, Revegetation and Maintenance Plan, nor current Iowa rules were designed to replace all the topsoil. The intent was to insure that a layer of fertile soil covers the right-of-way area after

construction. However, the practice is not without precedent. The Agricultural Impact Mitigation Agreement (AIMA) for the 1998 Northern Border Project required the removal of all topsoil, up to 36 inches deep, both from the trench and subsoil storage area. The Illinois AIMA for the Alliance Project required topsoil removal up to 36 inches in the pipeline trench and 12 inches on the subsoil storage area. FERC also adopted these requirements for Northern Border Project 2000, the ANR portion of the Independence Pipeline and Market Link Expansion Projects, and the ANR Wisconsin Expansion project. Therefore, subrule 9.4(1) will be amended to require that the actual depth of the topsoil, not to exceed 36 inches, will first be stripped from the area to be excavated above the pipeline and, to a maximum of 12 inches, from the adjacent subsoil storage area.

Alliance and Northern opposed the prohibition against using stored topsoil as a roadway without landowner consent. Alliance alleged this is a fairly standard construction practice, which should not require landowner agreement to implement. Northern maintained that storing topsoil on traveled ways may be unavoidable and proposed the rule allow the practice when the construction right-of-way is limited. Consumer Advocate argued that placing topsoil on the traveled way increases the risk of mixing with the subsoil. Farm Bureau also opposed this practice. The Board believes this matter is of sufficient concern to landowners that it should not be done without their consent and the requirement in the rule will remain as proposed.

Delaware County Supervisor Shirley Helmrichs and Landowner Michael J. Ryan maintained that topsoil had been used for entrance roads and ramps instead of right-of-way storage. They also contended that land leveling to facilitate construction was done without separating the topsoil. Topsoil should not be used for entrance roads

and ramps or removed from the landowner's property without consent. Nor should land leveling be performed without storing and replacing the topsoil. Paragraph 9.4(1)"b" will be modified to prohibit the use of topsoil for such purposes.

Alliant suggested the clearance requirement in subrule 9.4(2) apply only "when possible." Subrule 9.4(2) will be proposed without change. The 12-inch clearance requirement is intended to provide workspace between the pipeline and tile line without affecting the other facility and is consistent with federal pipeline safety standards for both gas and liquid pipelines.

Paragraph 9.4(2) sets forth the requirements for temporary and permanent repair of drain tile. The IPC, Amoco and Northern suggested the requirement in paragraph 9.4(2)"b" that flowing tile lines be temporarily repaired immediately be deleted. Northern recommended that the rule state repairs to flowing lines be made “promptly” rather than “immediately.” IPC and Amoco recommended requiring temporary repair only “to the extent practical.” Northern contended repair of tile lines that are parallel to the trench would be impractical. The IPC and Amoco asserted that temporary repair of dry tile lines should be not be required. Northern suggested the rule require temporary repairs to dry tile lines within 30 days rather than four. Alliance suggested 20 days.

Northern regarded water in the trench as inevitable in many cases and a manageable problem. The IPC and Amoco stated that they consider allowing tile to flow into the trench or, in the alternative, plugging the tile to be options. They argued they should be allowed to choose between temporary repair and paying damages. Consumer Advocate challenged the practicality of payments. Consumer Advocate

and Farm Bureau also questioned if pumping of large amounts of trench water would create erosion or wetness problems for the landowner.

The Farm Bureau, Delaware County Supervisor Helmrichs, and landowners Cassel, Shover, and the Garners maintained that temporary tile repairs are needed to prevent wet soil conditions on the right-of-way and adjacent lands. They stated wet soils could cause problems such as difficult construction, soil mixing, and compaction. Landowner Gary Mugge contended that unrepaired tile during construction had caused flooding and crop damage on his land, as well as soil compaction. Landowners Cassel and Mau said unrepaired tile lines need to be capped to keep mud out if trench water reaches open tile ends. The Langbehns favored temporary repairs for wet or dry lines but pointed out the need for animal guards on lines left open.

The comments from farm and landowner interests indicate that the fundamental concerns to be addressed are maintaining drainage from adjacent lands during and after construction and preventing entry of mud and debris into the open ends of cut tile. It appears these concerns can be protected without requiring temporary repair in all instances. The Board also recognizes that if tile lines are crossed at a sharp angle, the ends of cut tile lines may be too far apart for temporary repair to be practical. If water flows from unrepaired tile lines, the presence of water in the trench has minimal impact on the construction of the pipeline.

The Board will make several modifications to paragraph 9.4(2)”b” based on these comments. Repairs to flowing tile lines must be made as soon as is practicable. Temporary repairs to lines that remain dry will not be required if permanent repairs

can be made within ten days. Temporary repair will not be required if the ends of the tile line are too widely separated for temporary repair to be practical. The open ends of unrepaired tile lines must be protected from entry of mud if water rises, foreign material, or small animals. Plugging of upstream tile lines will not be permitted. The rules do not provide for payment of damages in lieu of repairs.

Alliance recommended paragraph 9.4(2)"c" be modified to include a statement that the tile line marker will have to be moved to the edge of the right-of-way to accommodate the spoil bank and various construction activities. Grundy County recommended requiring a wheel-type trenching machine to help establish the location of existing lines.

The spoil bank is created when the trench is dug. The locations of tile lines in the trench wall are then noted and marker flags or stakes placed in spoil bank. No construction occurs on the spoil bank to disturb the markers. If areas of the trench away from the tile line were backfilled, the spoil pile next to the exposed tile would remain. No situation can be envisioned that would require moving the stakes to the edge of the right-of-way. The Board agrees that wheel trenchers leave smooth and even trench sides which may make it easier to find cut tile lines than in a backhoe excavation. However, no one type of machine is suitable in all soil or working conditions. The paragraph will be proposed without change.

Paragraph 9.4(2)"d" sets forth the requirements for permanent repairs. Alliance argued that a pipeline company should be allowed to backfill the trench and later re-excavate tile lines for permanent repairs. Amoco and IPC suggested deletion of the requirement for permanent repairs before backfilling. The Board opposes backfilling

the trench prior to final repairs. Re-excavating the trench to repair tile would be more difficult and expensive than leaving the trench open at the point of tile crossing. Any error would leave unrepaired tile behind. The Board declines to propose the suggestions.

The Langbehns recommended that if clay tile is replaced with corrugated plastic tile, the plastic tile should be a larger size since corrugated plastic tile will not have the same capacity as clay tile. The Board agrees that replacing clay tile with the same diameter of corrugated plastic tile would reduce the flow capacity of the tile line. Paragraph 9.4(2)"d" will be amended to state that replacement tile must be of a "size and flow capacity" at least equal to the tile being replaced.

Alliance asserted paragraph 9.4(2)"e" should not require inspection of each repair and suggested a sampling should be sufficient. Amoco and IPC questioned whether county inspector approval of all tile repairs was a practical requirement. A county inspector is specifically required by Iowa Code sections 479.29(4), 479A.14(4) and 479B.20(4) to be present on the site and at each phase and separate activity of specified actions, including restoration of underground improvements. A sampling would not satisfy that requirement. The paragraph will be clarified to state that each permanent tile repair is to be inspected by the county inspector.

Landowner Ryan alleged that an 18–inch rock rolled off the pipeline right-of-way from a spoil pile. Mr. Ryan stated he subsequently hit the rock and damaged his silage chopper. The Board acknowledges it is possible that during soil stockpiling or rock hauling chunks of rock could end up off the easement along with other debris from the right-of-way. Paragraph 9.4(3)"a" will be modified to state that the pipeline

company shall examine the area adjacent to the easement and along access roads on which rock was hauled and shall remove any debris or large rocks which may have rolled or blown over from the right-of-way or fallen from vehicles.

Amoco and IPC suggested paragraph 9.4(3)"b" be amended to allow spilled petroleum or chemical products to be "remediated" instead of removed. This type of spill can sometimes be treated in place using biological or chemical agents. This practice is not uncommon during environmental cleanups. Subrule 9.4(3)"b" will be amended to allow in-situ remediation of chemical petroleum spills.

Landowners Cassel and Offerman contended that on a recent project, the contractor tilled the soil less than 18 inches deep. Landowner Mau stated that only one tillage pass was made, and it was done under wet conditions leaving the soil hard and lumpy with large clods. The Garners reported that the contractor attempted to till with undersized equipment and could not till 18 inches deep. Landowner Ryan maintained that between wet conditions and the type of equipment used the contractor could not till more than 8 inches deep, and counted the future addition of 12 inches of topsoil to say that 18 inches of tillage would be achieved. Farm Bureau also reported inadequate deep tillage in recent pipeline construction.

While these comments primarily allege violations of Agricultural Impact Mitigation Agreement standards which the Board has no authority to address, the commenters make a valid point: Attempting to till in wet conditions hampers deep tillage efforts and leaves the soil in unsatisfactory condition. Paragraph 9.4(4)"a" will be modified to require tillage be done when soil conditions are appropriate.

Northern suggested that the requirement that roads be tilled not apply to roads that will remain in service. While it seems unlikely that the rule would be misapplied in this manner, there is a technical conflict with subrule 9.4(9), which requires that roads to remain be left in serviceable condition. Paragraph 9.4(4)"a" will be modified by adding language excepting roads that will remain in service.

Amoco and IPC proposed substituting "elevation and grade" for "line and grade" in subrule 9.4(5). The Board finds merit in the suggestion and will modify the subrule by substituting "elevation" for "line."

Alliance contended subrule 9.4(6) should require the seed mix restore the "original ground cover type," not the same species, otherwise there might be an unnecessary diversity of seeding requirements. Alliance appeared concerned that it might be required to prepare a customized seed mix exactly reproducing the disturbed plant species for each tract crossed. To preclude such an interpretation, subrule 9.4(6) will be modified by adding the phrase "or a comparable" ground cover.

Alliance maintained that the local highway department might object to leaving field entrances in place and that a landowner request only need be acceded to if it complies with all required permits. The Board agrees that leaving a field entrance permanently in place may require approval of the highway authority, and if such approval is not forthcoming, it may not be possible to accede to a landowner request.

Landowner Mau requested the Board strengthen subrule 9.4(9). According to Mr. Mau, the FERC environmental inspector ordered an access road removed before all land restoration work on the property was completed. Although the Board

cannot control a FERC inspector, future disagreement over whether completion of construction includes completion of land restoration can be prevented. Subrule 9.4(9) will be amended with the phrase “Upon completion of construction and land restoration.” The modification makes clear that some roads may still be needed for a time after the pipe is installed.

Three landowners noted an additional problem with construction in wet conditions not anticipated by the subrule 9.4(10): rutting so deep that underlying tile lines were crushed. Although the tile was eventually repaired, the crushed lines contributed to other drainage problems. The phrase “or underground drainage structures may be damaged" will be added to the subrule.

Delaware County Supervisor Helmrichs suggested more specific criteria for construction in wet conditions, such as a certain rut depth or amount of rainfall. Amoco questioned who would decide if “construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed,” and how this would be determined. Because the impact of rutting or rainfall will depend on local circumstances, such as the nature of the soil and prior rainfall, the Board does not believe it practical to create specific criteria. The Board believes this decision is best left to the on-site judgement of the county inspector.

Amoco and IPC proposed revisions to subrule 9.4(10) that would limit application of this rule to agricultural lands and allow the land restoration plan to specify other preventive or remedial actions. The companies noted that construction in wet conditions might be unavoidable if areas of chronically wet soil are encountered. The application of these rules is limited to agricultural land and it is unnecessary to

repeat this throughout the rules. The Board agrees there may be other ways of preventing soil mixing; for example, use of pads or mats to drive over. Subrule 9.4(10) will be amended to give more flexibility in the options available to reduce the damage to the soil or tile lines.

In the recently adopted FERC Rule 18 C.F.R. Part 157.6(d)3(iv), (Docket No. RM98-17-000, Order No. 609, effective 11/25/99), notices to landowners of a pipeline certificate filing must include "how the landowner may contact the applicant, including a local or toll-free number and a name of a specific person to contact who is knowledgeable about the project." For additional work to be done under existing certificates, 15 C.F.R. Part 157.203(d)2(ii) requires the notice include "the name and phone number of a company representative that is knowledgeable about the project."

In its original comments, Northern suggests rule 9.5 be struck because FERC's rule adequately covers this issue. However, the FERC rule affects only interstate natural gas pipelines. Other pipelines are also affected by the Iowa rules, so this rule cannot be eliminated. In subsequent comments, Northern proposed language stating that this rule should not apply when the FERC rule is followed.

The Farm Bureau maintained its members have reported difficulty locating a contact person. Delaware County Board Supervisor Helmrichs reported that in a recent project, many landowners' only contact with the company were cell phone numbers that were disconnected after construction, thus supporting the need for a longer term contact point. One landowner strongly supported a point of contact requirement, stating that pipeline personnel are mobile and it is hard to contact the

same person twice. Another also referred to problems with finding someone with whom to discuss their concerns.

The FERC rule does not assure that a point of contact will remain available once construction is completed. Nor does it assure that this person would be an appropriate contact for claims. The Board finds the FERC rule insufficient to fully protect Iowa's interests, and does not support Northern's proposal that Iowa rules not apply when the FERC rule is in effect.

Consumer Advocate suggested revising rule 9.5 to include a toll-free telephone number, an Iowa mailing address, specifying that information and changes must be communicated in writing, requiring a designated point of contact be available for five years rather than one year after construction, requiring response to any landowner inquiry or claim within 48 hours, and adding a new section on identification of an agent for service of process in Iowa. Farm Bureau supported Consumer Advocate's comments.

The Board finds merit in Consumer Advocate's suggestion regarding a toll-free number. It should not cost landowners to seek information from the company and is consistent with the FERC rule. The Board also agrees with Consumer Advocate's recommendation that the information and changes be communicated in writing. Consumer Advocate asserted that it might take more than a year to settle all damage claims. Five years seems no less arbitrary than one year. A better idea might be to require landowners have a contact point until their damage claims are settled. Rule 9.5 will be modified to provide for a toll-free phone number, communication of contact changes in writing, and maintaining a point of contact for individuals until their damage

claims are resolved. The Board believes the proposed rules sufficiently address designating a contact for landowner inquiries and declines to propose Consumer Advocate's additional suggestions.

Alliance contended that a separate agreement made in accordance with rule 9.6 that varies from the Board's rules would by definition be inconsistent with those rules and requested clarification. The Board would note that it is not a violation of these rules to accommodate reasonable landowner requests as long as they are not inconsistent with the restoration requirements.

The Farm Bureau and a number of the landowner commenters sought more authority for the County Inspector. One landowner questioned whether the penalty provisions of the laws were adequate deterrents. Enforcement powers can only be granted by the Legislature and cannot be created by the Board.

Several landowner commenters were also critical of the performance of the County Inspectors and the FERC Environmental Inspectors. Responsibility for the performance of the County Inspector lies with the County Board of Supervisors and the FERC inspector with FERC. Any failings in this area are not within the authority of the Board to address by rule.

Some landowner commenters suggested rules limiting the size of a work “spread” or the number of simultaneous construction activities, because on past projects there were not enough County Inspectors to properly cover all ongoing activities. The responsibility of having adequate personnel to fulfill its obligations lies with the county. Although the laws sometimes refer to “the inspector,” no limit is set on the number of inspectors the county can hire, within reason. The laws provide

that the reasonable costs of county inspection will be borne by the pipeline company, so the county should not be under financial restraint in staffing.

Other landowner comments sought adoption of rules on damage claim issues. One landowner argued that the state of Iowa should enforce contracts made between landowners and pipeline companies. Grundy County suggested the Board require contractors to post a Performance Bond and a Certificate of Insurance with the county. Consumer Advocate also raises issues of compensation. However, the Board has little, if any, authority in these matters, particularly with regard to the counties, and these remedies are not available through the Board.

The IPC and Delaware County Supervisor Helmrichs recommended rules for crossing of county roads. The County and not the Board determines the manner in which county roads are crossed by pipelines. These comments appear to arise from misunderstanding due to the frequent practice of having the county inspectors also inspect pipeline road crossings in addition to their land restoration duties.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before July 5, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to Docket No. RMU-99-10. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Since the rule-making docket will be a continuation from ARC 9400A, the comments should contain new arguments not previously presented to the Board.

The Board also requests the commenters specifically address the following: (1) the definition of pipeline construction; (2) what activities constitute pipeline maintenance; (3) what activities constitute pipeline operation; (4) what is a significant disturbance to the soil; (5) the definition of proper notice; (6) filing requirements with the Board under paragraph 9.3(2)"c" for interstate natural gas pipelines; and (7) top soil removal.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on July 19, 2000, in the Board's hearing room at the address listed above.

Pursuant to Iowa Code section 479.29(1), the Board will distribute copies of this Notice of Intended Action to each county board of supervisors.

These rules are intended to implement Iowa Code chapters 479, 479A, and 479B.

The following amendment is proposed.

Rescind 199-Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9

RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

199–9.1(479,479A,479B) General information.

9.1(1) *Authority.* The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29, 479A.14, and 479B.20, relating to land restoration standards for pipelines.

The requirements of this chapter do not apply to interstate natural gas pipeline projects that were both constructed between June 1, 1999, and July 1, 2000, and that also received a certificate from the federal energy regulatory commission prior to June 1, 1999.

9.1(2) *Purpose.* The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules.

9.1(3) *Definitions.* The following words and terms, when used in these rules, shall have the meanings indicated below:

a. "Agricultural land" shall mean:

(1) Land which is presently under cultivation, or

(2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or

(3) Cleared land capable of being cultivated.

b. "Drainage structures" or *"underground improvements"* means any permanent structure used for draining agricultural lands including tile systems and buried terrace outlets.

c. "Landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

d. "Pipeline" means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, in intrastate or interstate commerce.

e. "Pipeline company" means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

f. "Pipeline construction" means installation, replacement, operation and maintenance involving substantial disturbance to the land, and removal of a pipeline, but shall not include emergency repairs.

g. "Proper notice" to the county inspector means that the pipeline company and its contractor shall keep the person responsible for the inspection continually informed of the work schedule and any schedule changes, and shall provide at least 24 hours written notice before trenching, permanent tile repair, or backfilling is undertaken at any specific location.

h. "Soil conservation practices" means any land conservation practice recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

i. "Soil conservation structures" means any permanent structure recognized by federal or state soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

j. "Till" means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till-planting practices is also considered tilled.

k. "Topsoil" means the uppermost part of the soil frequently designated as the plow layer, or the soil depth sometimes referred to as the A horizon, which

represents the depth of the soil that is ordinarily moved in tillage, or its equivalent in uncultivated soils. Topsoil can ordinarily be distinguished from topsoil by its higher organic content and darker color.

199–9.2(479,479A,479B) Filing of land restoration plans. Land restoration plans shall be prepared pursuant to Iowa Code sections 479.29(9) and 479B.20(9) and this chapter for pipeline construction projects requiring a permit or an amendment to a permit which proposes pipeline construction or relocation. Plans for interstate natural gas pipeline construction projects requiring a certificate from the federal energy regulatory commission shall be prepared pursuant to Iowa Code section 479A.14(9) and this chapter.

a. *Content of plan. A* land restoration plan shall include but not be limited to the following:

(1) A brief description of the purpose and nature of the pipeline construction project.

(2) A description of the sequence of events that will occur during pipeline construction.

(3) A description of how compliance with subrules 9.4(1)-9.4(10) will be accomplished.

(4) The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5(479,479A,479B).

b. Plan variations. The board may by waiver accept variations from this chapter in such plans if the pipeline company is able to satisfy the standards set forth in 199

IAC 1.3 and if the alternative methods would restore the land to as good as or better condition than provided for in this chapter.

c. Environmental impact statement, environmental assessments, and agreements. Preparation of a separate land restoration plan for an interstate natural gas company project subject to federal energy regulatory commission authority may be waived by the Board if the requirements of Iowa Code section 479A.14 are substantively satisfied in an environmental impact statement or environmental assessment, as defined in 18 CFR Section 380.2, as accepted and modified by the federal energy regulatory commission certificate issued for the project.
Preparation of a separate land restoration plan may be waived by the Board if an agricultural impact mitigation or similar agreement is reached by the pipeline company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. If an environmental impact statement, environmental assessment or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199–9.3(479,479A,479B) Procedure for review of plan.

9.3(1) A pipeline company that is subject to Iowa Code sections 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479) or 13.2(479B), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2) or 13.9(479B). Review of the land restoration plan will be coincident with the board's

review of the application for permit and objections to the proposed plan may be filed as part of the permit proceeding.

9.3(2) A pipeline company that is subject to Iowa Code chapter 479A shall file a proposed land restoration plan, or a petition requesting waiver of the plan filing requirement, with the Board and the Office of Consumer Advocate no later than 120 days prior to the date construction is scheduled to commence. If the pipeline company seeks waiver of the requirement that a plan be filed, and instead proposes Board acceptance of a federal energy regulatory commission environmental impact statement or environmental assessment, or of an agricultural impact mitigation or similar agreement, the filing shall include a copy of that document. If the document is not final at the time filing is required, the most recent draft or a statement of the anticipated relevant contents shall be filed. If a federal energy regulatory commission environmental impact statement or environmental assessment information, final or draft, is filed, the filing shall identify the specific provisions which contain the subject matter required by Iowa Code 479A.14(1).

a. Any interested person may file an objection on or before the twentieth day after the date the plan is filed.

b. Within 45 days of the filing of the plan or waiver request, the Board will issue a decision on whether the filing demonstrates that the land restoration requirements of Iowa Code 479A.14 and of these rules will be met. The Board may impose terms and conditions if the filing is found to be incomplete or unsatisfactory. The Board's action may also be conditional pending confirmation that the federal energy

regulatory commission will not impose terms and conditions that are not consistent with the action taken by the Board.

c. Interstate natural gas pipeline companies proposing pipeline construction requiring a federal energy regulatory commission certificate shall include a copy of chapter 9 in the notice mailed to affected landowners required by federal energy regulatory commission rule 18 C.F.R. 157.6(d). Interstate natural gas pipeline companies proposing pipeline construction requiring a federal energy regulatory commission certificate shall also file the following with the Board:

(1) A copy of the landowner notification required by federal energy regulatory commission rule 18 CFR 157.6(d), filed coincident with the mailing to landowners.

(2) Notice of any open public meeting with Iowa landowners scheduled by the company or by the federal energy regulatory commission.

(3) Copies of letters from Iowa landowners concerning the project filed with the federal energy regulatory commission, within 20 days of such filing.

(4) A copy of any agricultural impact mitigation or similar agreement reached with another state.

9.3(3) After the board has accepted the plan, but prior to construction, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction, and to the county board of supervisors and the county engineer of each affected county. However, if a waiver is granted pursuant to subrule 9.3(2), an interstate natural gas pipeline company need not provide landowners with second copies of environmental impact statements or

environmental assessments if copies are provided to landowners by the federal energy regulatory commission.

199–9.4(479,479A,479B) Restoration of agricultural lands.

9.4(1) *Topsoil separation and replacement.*

a. *Removal.* Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with the construction of a pipeline unless otherwise provided in these rules. The actual depth of the topsoil, not to exceed 36 inches, will first be stripped from the area to be excavated above the pipeline and, to a maximum of 12 inches, from the adjacent subsoil storage area. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction

b. Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The spoil piles shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods, which do not require the opening of a trench. If provided for in a written agreement with the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

d. Backfill. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed. The depth of the replaced topsoil shall conform as nearly as possible to the depth removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as nearly as possible.

9.4(2) *Temporary and permanent repair of drain tile.*

a. *Pipeline clearance from drain tile.* Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. Temporary repair. The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within ten days of the time the damage occurred.

(3) Temporary repair is not required if the angle between the trench and the tile lines places the tile end points too far apart for temporary repair to be practical.

(4) If temporary repair of the line is not made, the upstream exposed tile line shall not be obstructed but shall nonetheless be screened or otherwise protected to prevent the entry of foreign materials and small animals into the tile line system, and the downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if the water level rises in the trench.

c. *Marking.* Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector.

d. *Permanent repairs.* Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed as soon as is practical after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced so that its original gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a

sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually, by probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

e. Inspection. Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile line. The backfill shall be inspected for compliance by the county inspector.

g. *Subsurface drainage*. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.4(3) *Removal of rocks and debris from the right-of-way.*

a. *Removal.* The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation, unless otherwise provided for in a written agreement. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads, and shall remove any large rocks or debris which may have rolled or blown from the right-of-way or fallen from vehicles.

b. *Disposal.* Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in-situ remediation.

9.4(4) *Restoration of area of soil compaction.*

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the

property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches on other lands, and shall be performed under soil moisture conditions which permit effective working of the soil. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. *Rutted land restoration*. Rutted land shall be graded and tilled until restored to as near as practical to its preconstruction condition. On land from which topsoil was removed, the rutting shall be remedied before the topsoil is replaced.

9.4(5) *Restoration of terraces, waterways, and other erosion control structures.* Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing at the time of pipeline construction unless otherwise agreed to by the landowner in a written agreement. Any drain lines or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. Such restoration shall be inspected for compliance by the county inspector.

9.4(6) *Revegetation of untilled land.*

a. *Crop production*. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate,

following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph "b" below shall apply.

b. *Delayed crop production*. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year.

9.4(7) *Future installation of drain tile or soil conservation structures.*

a. *Future drain tile.* At locations where the proposed installation of underground drain tile is made known in writing to the company prior to securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will permit proper clearance between the pipeline and the proposed tile installation.

b. *Future practices and structures.* At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such soil conservation practices and structures and retain the integrity of the pipeline.

9.4(8) *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished.

9.4(9) *Restoration of areas used for field entrances and temporary roads.* Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.4(8) and deep tilled as required by subrule 9.4(4). If by agreement or at landowner request a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

9.4(10) *Construction in wet conditions.* Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or underground drainage structures may be damaged. To facilitate construction in soft soils, the pipeline company may elect to remove and stockpile

the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.4(1).

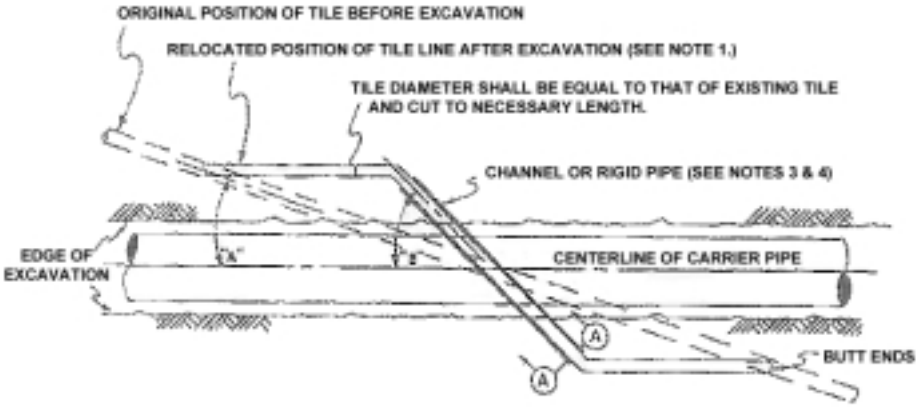
199–9.5(479,479A,479B) Designation of a pipeline company point of contact for landowner inquiries or claims. For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for landowner inquiries or claims. The designation shall include the name of an individual to contact and a toll-free telephone number and address through which that person can be reached. This information shall be provided to all landowners of property that will be disturbed by the pipeline project prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to landowners. A designated point of contact shall remain available for at least one year following completion of construction for all landowners and for landowners with unresolved damage claims until such time as those claims are settled.

199–9.6(479,479A,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing and a copy provided to the county inspector.

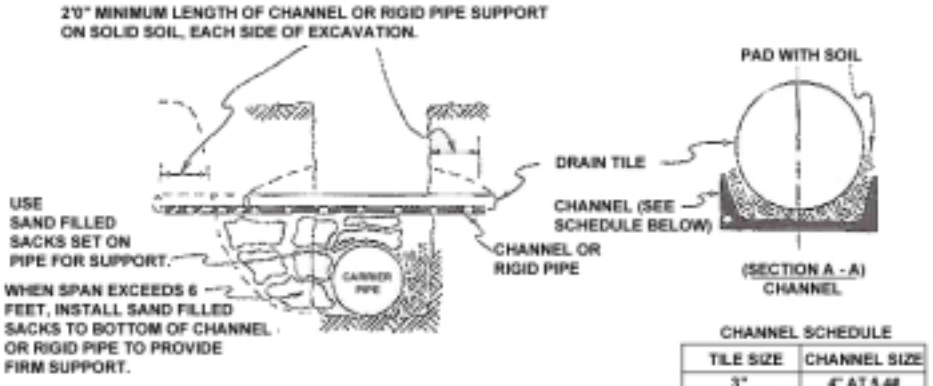
199–9.7(479,479A,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections

479.29, 479A.14, and 479B.20, including giving proper notice of trenching, permanent tile repair, or backfilling. If the pipeline company or its contractor does not comply with the requirements of Iowa Code sections 479.29, 479A.14, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken or seeking imposition of civil penalties or both. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

RESTORATION OF DRAIN TILE



(PLAN VIEW)

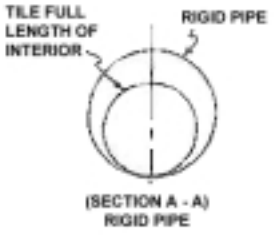


(METHOD OF SUPPORT - - ELEVATION)

CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

NOTES:
1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



IJB PL-1

RESTORATION OF TERRACE

NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29, 479A.14, and 479B.20.

May 19, 2000

/s/ Allan T. Thoms
Allan T. Thoms
Chairperson